

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/11/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice M. THANIKACHALAM

Criminal Appeal No. 926 of 1995

Singaravelu. .. Appellant/Accused.

-Vs-

State by Inspector of Police,

Dindigul Taluk Police Station,

Dindigul. (Crime No.420/94) .. Respondent/Complainant.

Criminal Appeal filed under Section 374 (2) Code of Criminal Procedure against the Judgement and Order of conviction passed by the Sessions Judge, Dindigul in S.C.No. 47 of 1995 dated 10-11-1995.

!For Appellant : Mr. K.S. Ramachandran

^For Respondent : Mr. V.M.R. Rajendran,

Addl. Public Prosecutor

:JUDGEMENT

(Judgment of the Court was delivered by P. SATHASIVAM, J.,)

The appellant in this appeal is the sole accused in S.C. No.47 of 95 on the file of Principal District Judge, Dindigul. He was convicted under Section 302 I.P.C. and sentenced to undergo life imprisonment on 10-11-1995.

2. The case of the prosecution in brief is as follows:

(a) There was a quarrel between the husband of the deceased Chinnammal and the accused with regard to using of mike set some 1 = years prior to the date of deposition of P.W.1. The accused suspected that because of the sorcery (bra;tpid) committed by the deceased, there was loss in his business and hence he decided to take vengeance her. With the said intention, on 13-4-94 at about 1.15 P.M. when the deceased Chinnammal was returning home after purchase of provisions, the accused who was cutting fire-wood in front of his house, attacked the deceased with Aruval-M.O.1 on the right side of her cheek

and neck. She pleaded with folded hands not to cut. She fell down and died. The accused ran away towards east with Aruval.

(b) One Chandramathi-P.W.1, neighbour of the deceased who witnessed the occurrence, made a complaint-Ex.P.1 to the Police. In the complaint it is stated that she is residing in Kallipatti village along with her husband. Roughly two years prior to the date of the complaint, there was a dispute between the accused and P.W.4 (husband of the deceased) with regard to using of mike-set. Due to the said enmity and also due to the sorcery committed by the deceased, the accused lost every thing and decided to take away the life of the deceased. With the said oath, the accused left the colony house and settled near the house of P.W.1. On 13-9-94 at about 11.45 A.M. while P.W.1 was chatting with his mother-in-law Nallammal, Pappa-P.W.2 and her brother's wife Alaguselvi in front of her house, her mother in law's sister-Chinnammal was returning home after purchase of provisions. While she was proceeding in front of the house of the accused, he was splitting fire-wood. On seeing the deceased, the accused shouted that she was responsible for the loss of his property, and then cut on the right side of her cheek and neck. Though she pleaded with folded hands not to cut, the accused cut her indiscriminately, due to which she fell down and died. On seeing this occurrence, P.W.1 and others rushed towards her. They saw the accused running towards east with Aruval. They verified that Chinnammal died due to the stab injuries. Then she gave a complaint-Ex.P-1 to the police.

(c) One Pappa, a resident of Kallipatti was examined as P.W.2. According to her, there was a dispute between the accused and the deceased as well as her husband over the using of mike-set. Due to the said dispute, the accused vacated the colony house and settled at old street which is opposite to her house. On the fateful day, she was chatting with P.W.1, Alaguselvi and Nallammal in front of her house. While so, when the deceased was crossing the house of the accused who was cutting fire-wood. After shouting that she was responsible for the loss caused to his family by doing sorcery, went and cut her on the right side of cheek and neck.

(d) One Mariappan, a resident of Kallipatti, was examined as P.W.3. He turned hostile.

(e) Ex.P-1 complaint was recorded by the Sub Inspector of Police, P.W.9 and the same was registered in Cr.No. 420/94 under Section 302 I.P.C. P.W.9 prepared Ex.P-11 printed First Information Report and sent Exs. P-1 and P-11 to the Judicial Magistrate-No.2, Dindigul. He also sent copy of the complaint to P.W.10, Inspector of Police. On receipt of the copy of the First Information Report, P.W.10 Inspector of Police, took up investigation and went to the scene of occurrence. At 17.00 hours, he prepared Observation Mahazar-Ex.P-2 and Sketch-Ex.P-12. At 17.30 hours P.W.10 seized M.O.3-blood-stained earth under Ex.P-3 mahazar. M.O.4 is the sample earth. Between 18 and 21 hours he conducted Inquest over the body of the deceased and Ex. P-13 is the Inquest report. He examined P.Ws.1, 2 and others during the inquest. At 12.00 hours he sent the dead body for post-mortem through one Navaneetham-P.W.7. Ex.P-5 is the requisition for conducting post-mortem. On 14-4-94 at 4.00 hours P.W.10 arrested the accused at Chettinaickenpatti

bus-stop in the presence of P.W.5 and another, recorded his confession statement-Ex.P-14 and recovered M.O.1 Aruval under Ex.P-1 mahazar.

(f) On the same day between 2 P.M. and 3.30 P.M. P.W.6 Dr. N. Bharathi, Assistant Surgeon, Government Headquarters Hospital, Dindigul, conducted autopsy on the body of the deceased. Ex. P-6 is the post-mortem certificate. The Inspector of Police sent the M.Os. to Judicial Magistrate-No.2, Dindigul. The same were sent for chemical examination by way of requisition-Ex.P-7. On 15-11-95 P.W.10 examined P.W.6-Doctor, and after completing the investigation, he filed charge sheet against the accused for the offence under Section 302 I.P.C.

3. During the course of trial, P.Ws.1 to 10 were examined, Exs. P-1 to P-14 and M.Os.1 to 7 were marked.

4. When the accused was questioned under Section 313 Cr.P.C., he simply denied his complicity in the crime and no document or evidence let in on his side.

5. On considering the materials available on record, the trial Court accepted the case of the prosecution, convicted the accused and sentenced him to life imprisonment. Aggrieved by the conviction and sentence, the accused has filed the above appeal.

6. Learned counsel appearing for the appellant-accused strenuously contends that the eye witnesses, namely, P.Ws.1 and 2 relied on by the prosecution are not truthful witnesses and that the conviction based on their evidence cannot be sustained. He further submits that Ex.P.1-complaint is a fabricated document which was made subsequent to the arrest of the accused. He also submits that there are lot of discrepancies in the evidence of P.Ws.1 and 2, more particularly with regard to the place of occurrence etc. He further contends that the learned trial Judge ought to have seen that the evidence of eye witnesses and the medical witness were not conformity with each other. According to him, the learned Sessions Judge ought not to have believed the motive for the occurrence as alleged by the prosecution. On the above contentions, we have heard the learned Additional Public Prosecutor.

7. We will now analyse the evidence to find out whether the prosecution has succeeded in establishing the guilt namely the accused murdered Chinnammal. According to the prosecution, the motive for the occurrence relates to playing of mike-set by the accused continuously. The action of the accused was questioned by P.W.4, husband of the deceased, 2 years prior to the occurrence. It is also the case of the prosecution that because of the objection raised by P.W.4 and his wife, the accused sold his colony house and settled near the house of P.W.1. The said motive was explained by P.Ws.1 and 2. No doubt, apart from the above motive, P.W.2 has also stated that the accused had grudge over the deceased Chinnammal, since, according to him, because of the sorcery committed by the deceased, the accused lost his property and business and so he decided to take vengeance against her. It is true that the said aspect was not spoken to by P.W.1. However, the dispute between the accused and P.W.4, husband of the deceased,

over continuous playing of mike-set is spoken to by P.Ws.1 and 2 who are residents of Kallipatti. In this regard, it is to be noted that it is settled law as laid down by this Court as well as the Supreme Court that merely because motive has not been established or due to the absence of any motive for the attack, we cannot throw out the entire prosecution case, particularly when the evidence relating to the main occurrence through the eye witnesses is held to be acceptable. In the light of the above legal position, let us now consider the evidence of P.Ws.1 and 2, who are said to be the eye witnesses in this case. P.W.1 is native of Kallipatti and she knows the accused Singaravelan. She is not related to him. She explained that Singaravelan, while he was residing in the colony house, which is nearer to the house of the deceased, used to play mike-set day and night, giving annoyance and hindrance to the residents to have a peaceful sleep. Over this incident, the accused and the deceased quarrelled with each other. The quarrel happened on many occasions. It is her further case that because of the said enmity, the accused vacated his colony house and settled near her (P.W.1's) house. She also deposed that 1 = years prior to the date of her evidence, around 1.15 P.M., when she was chatting with Pappa-P.W.2, Alaguselvi and one Nallammal in front of her house, the accused was splitting fire-wood in front of his house and that he (accused) on seeing the deceased, shouted that he lost all his properties because of the deceased, and attacked her with AruvalM.O.1 on the right side of her cheek and neck. He also cut on both of her hands. Since the accused threatened P.W.1, if she came near the occurrence spot, she did not go nearer to the occurrence spot. Then she saw the accused going towards east with M.O.1-Aruval. When P.W.1 went near Chinnammal, she noticed her died. According to her, she waited for some time for the arrival of her husband and thereafter, she went to the Police Station along with him and made a statement. Ex. P-1 is her complaint. Her husband attested Ex. P-1. Even in cross-examination, she reiterated the motive for the incident, namely, existence of mike-set dispute between the accused and P.W.4 and the manner in which the deceased was killed by the accused. Learned counsel for the accused contends that according to P.W.1, though the accused cut both the hands of the deceased with M.O.1-Aruval, the evidence of the Doctor-P.W.6 and the Post-mortem certificate-Ex.P6 do not show any injury on the right hand of the deceased. This is only a minor discrepancy and it would not affect the case of the prosecution.

8. The next witness examined on the side of the prosecution is P.W.2, who is also a resident of Kallipatti and her husband is employed as Lineman in Telephone Department. According to her, the house of the deceased was situated on the opposite side of the house of the accused and the latter used to play mike-set continuously which caused irritation to P.W.4, husband of the deceased, resulting in quarrel with each other. Owing to the dispute, the accused vacated his colony house and settled in old Street, near the house of P.W.1. According to P.W.2, the present house where the accused is living is situated opposite to her house. She corroborates the evidence of P.W.1 with regard to the occurrence, and the manner in which the deceased came with Aruval, cut on the right side of her cheek and neck. No doubt, with regard to the motive, namely, mike-set dispute between the accused and P.W.4, apart from the evidence of P.W.1, P.W.2 also stated that the accused shouted that because of sorcery committed by the deceased, he lost all his business and property

and decided to take vengeance against her. As said earlier, both the eye witnesses, namely, P.Ws.1 and 2 explained the motive for the incident and the attack on the deceased by the accused with Aruval, resulting in cut injuries on the right side of her cheek and neck etc.

9. Though one Mariappan was examined as P.W.3 as eye witness on the side of the prosecution, since he turned hostile, his evidence was not relied on. However, it is relevant to note that even P.W.3 (hostile witness) has stated that on the fateful day, around 1 .15 P.M. on hearing noise, he came out from his house and saw the accused cutting the deceased with M.O.1 Aruval, and running away from that place. In his chief examination, he deposed that, @mg;nghJ rp'; fhuntyd; btl;o tpl;L me;j ,lj;ij tpl;L nghdhd;@/ This portion of evidence is admissible and it supports the evidence of P.Ws.1 and 2.

10. The other witness examined on the side of the prosecution is P.W.4, husband of the deceased. He is not a eye witness. However, he explained that himself and his deceased wife often insisted the accused not to play mike-set frequently. No doubt, he admitted that they did not make any complaint about this to the police on any earlier occasion.

11. As regards injuries, the prosecution has examined P.W.6-Doctor, who conducted autopsy on the body of the deceased Chinnammal. According to her, post-mortem commenced at 2 P.M. on 14-4-1994. She noted the following external injuries in Ex.P.6-Post-mortem certificate:

"External Injuries:

1. An incised wound measuring 10 x 4 cm x bone deep extending from Rt.side of the chin transversely placed reacheding 2 cm below the Rt. Ear.

2. An incised wound measuring 15x6x4cm□2cm above supra clavicular fossa extending from lower end of thyroid cartilage across the right side of the neck 3 cm away from the nape of the neck, spindle shaped cut edged clear.

3. Incised wound measuring 2x1x1 cm, over the back of left forearm in the middle.

4. Two incised wounds measuring 4 cm x 1 cm x = cm over the backside of left elbow□skin peeled off.

Internal Examination:

On probing the wound No.2, Rt.carotid artery, the Rt. Jugular vein and sterno-mastoid muscles were found cut.

Heart □ Chambers empty

Lungs □ Pale

Hyoid Bone □ Intact

Stomach, Liver, Spleen, Kidneys : Pale

Bladder □ Empty

Uterus □ Normal

Head □ No bony fracture of skull-Membrane intact.

Brain □ Pale

P.M.concluded at 3.30 P.M on 14-4-94.

The death would have occurred 24 hours to 26 hours prior to autopsy."

The opinion of P.W.6 as to cause of death is that the deceased would appear to have died of shock and haemorrhage due to injury of carotid artery. P.W.6 also opined that all the incised wounds as mentioned in Ex.P-6 Post-mortem certificate are possible by M.O.1- Aruval. In cross-examination, P.W.6 also explained that when carotid artery and Jugular vein were cut, death will be instantaneous. She further explained that after receiving injury No.2, the deceased would not have been standing and would not have spoken. According to P.W.6, after receipt of injury No.2, the deceased would have fallen down and would not have any voluntary action. Here again, learned counsel for the accused, in the light of the statement made by P.W.6 in the crossexamination that after injury No.2, it would not be possible for the deceased to show and fold her two hands as stated by P.Ws.1 and 2. As discussed earlier, merely because the eye witnesses have spoken to the fact that after cut injury, the deceased folded her hands and made a request not to cut, their evidence should not either be disbelieved or rejected on that ground. On the other hand, as rightly argued by the learned Additional Public Prosecutor, the evidence of P.W.1 and P.W.2 coupled with the medical evidence, namely, P.W.6 and Ex.P-6 Postmortem certificate prove the case of the prosecution beyond reasonable doubt.

12. P.W.9, Sub Inspector of Police, would state that on 13-4-94 at 16.30 hours he recorded ExP-1 complaint from P.W.1 Chandramathi who came to the Police Station along with her husband. He registered the complaint in Crime No. 420/94 under Section 302 IPC and prepared Ex.P-11 Printed F.I.R., and sent Exs.P-1 and P-11 to Judicial Magistrate-No.II, Dindigul and also sent copy of F.I.R to P.W.10, Inspector of Police. He denied the suggestion that the statement of P. W.1 was not recorded at the Police Station as claimed and also denied the fact that only after arrest of the accused, Ex.P-1 was prepared and registered. The Inspector of Police was examined as P.W.10. He deposed in his evidence that on 13-4-94, on receipt of the copy of the F.I.R in respect of crime No. 420/94 under Section 302 IPC, he took up investigation, visited the place of occurrence at 5 P.M. and prepared Observation Mahazar-Ex.P-2 in the presence of Marudamuthu-P.W.5 and one Palanisamy and prepared sketch-Ex.P-12. He seized M.O.3blood-stained earth; M.O.4-sample earth and prepared Ex.P-3 Mahazar. Between 6 P.M and 9 P.M. he conducted inquest in the presence of panchayatdars and also examined P.W.1-Chandramathi, Pappammal-P.W.2, Alaguselvi, Muthulakshmi and recorded their statements. Ex.P-13 is the inquest report. At about 9 P.M. he sent the body of the deceased to the hospital for Post-mortem through a constable. Then he examined P.W.3Mariappan, Murugan, Krishnan, Velusamy, Murugan, Palanisamy, Shanmugham and P.W.5-Marudhamuthu and recorded their statements. After search, he arrested the accused around 4 A.M. on 14-4-94 near Chettinaickenpatti bus-stop in the presence of Marudhamuthu-P.W.5 and Palanisamy and recorded his confessional statement, the admissible portion of which is Ex.P-14. Based on the information of the accused, M.O.1 Aruval was recovered under Ex.P4 Mahazar. He sent the Material Objects to the Court with a requisition for sending them to chemical examination. On 15-4-94, he examined P.W.6 Doctor, who conducted post-mortem and after completing the

investigation on 5-9-94, he filed charge sheet against the accused.

13. The materials placed would clearly show that the prosecution has established their case. Though certain minor discrepancies are there in the evidence of P.Ws.1 and 2, as discussed above, their evidence is acceptable and truthful and the same was relied on by the learned trial Judge. The evidence of eye witnesses namely P.Ws.1 and 2, the admissible portion of the evidence of P.W.3 (who turned hostile) coupled with the medical evidence-P.W.6 and Ex.P-6-Postmortem certificate conclusively established that deceased Chinnammal died on account of homicidal violence and it was the accused who was responsible for her death.

14. In the result, the appeal is dismissed and the conviction and sentence imposed upon the appellant/accused by the learned Sessions Judge are confirmed. It is reported that the appellant/ accused is on bail and if so, the learned Judge shall take steps to commit him to Jail to undergo the remaining period of sentence.

R.B.

Index:- Yes

Internet:- Yes.

To:-

1) The Sessions Judge, Dindigul.

2) Copy to the Addl.Public Prosecutor, High Court, Madras.

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